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In re Application of :
Scalisi et al. :
Application No. 09/638,587 : ON PETITION
Filed: August 15, 2000 :
Attorney Docket Number: :
30639.2600 :

OFFICE OF PETITIONS

This is a decision on the petition under 37 CFR 1.47, filed February 14, 2005. The petition is properly treated under 37 CFR 1.183, to waive the requirement under 37 CFR 1.67 that all of the inventors sign a supplemental declaration.¹

The petition under 37 CFR 1.183 is **GRANTED**.

A non-final Office action was mailed in the above-identified application on July 14, 2003. Applicant files the instant petition and asserts that, in accordance with the Office action, a Supplemental declaration is required.

Applicable Law

37 CFR 1.67 states, in pertinent part:

(a) The Office may require, or inventors and applicants may submit, a supplemental oath or declaration meeting the requirements of § 1.63 or § 1.162 to correct any deficiencies or inaccuracies present in the earlier filed oath or declaration.

(1) Deficiencies or inaccuracies relating to all the inventors or applicants (§§ 1.42, 1.43, or § 1.47) may be corrected with a supplemental oath or declaration signed by all the inventors or applicants.

¹ A petition under 37 CFR 1.47 only applies to the initially filed 37 CFR 1.63 declaration.

With the instant petition, Applicant has set forth the steps taken to secure joint inventor Lawrence E. Hecox's signature on the supplemental declaration. Applicant avers that a copy of the supplemental oath/declaration was mailed to inventor White at his last known address, and after receiving no reply, Applicant searched the internet to no avail.

In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.


The supplemental declaration was required to be signed joint inventors Scalisi, Butler and Hecox; however, only Scalisi and Butler executed the declaration. Applicant has demonstrated that a *bona fide* effort was made to secure inventor Hecox's signature on the supplemental declaration. Accordingly, it is concluded that petitioner has demonstrated that this is an extraordinary situation requiring waiver of the rules.

The newly executed declaration, filed on January 13, 2004, will be entered, despite the fact that the requirement set forth in 37 CFR 1.67(a)(1) that all the inventors sign a supplemental oath or declaration has not been satisfied.

Deposit account 50-2638 has been charged the petition fee, \$400.00, as authorized in the instant petition.

The application file is being referred to Technology Center Art Unit 2635 for continued examination in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


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Office of Petitions